IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9096 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAREDNRA @ LALO KANUBHAI CHAUHAN

Versus

DISTRICT MAGISTRATE

Appearance:

MS BANNA DATTA for MR ANIL S DAVE for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 10/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of the order of detention dated 7.7.2000 (Annexure-A) passed by the respondent no. 1 in exercise of his powers conferred

upon him under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act).

2. As per the papers of grounds of detention, the detenu is a 'dangerous person' within the meaning of sec. 2(c) of the Act and that his activities are prejudicial to the maintenance of public order. To arrive at subjective satisfaction before passing the order of detention, the detaining authority has placed reliance on 3 IPC cases lodged in Bhavanagar City POlice Station and that 3 cases are pending before the court for trial. The detaining authority has also placed reliance on the statements of 4 anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the case of the detaining authority the statments of 4 witnesses were recorded by the Sponsoring Authority on 7.5.2000 and the detaining authority has by placing rubber stamp endorsement of 'verified the contents' verified the statements on 6.7.2000 and on the very next day, he has passed the order of detention dated 7.7.2000, which is challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed affidavit-in-replies, in reply to the main petition to controvert the grounds of attack referred to in the memo of writ petition.

4. Ms. Banna Datta learned advocate for the petitioner has argued that in this case, the detaining authority has not applied his mind for claiming privilege under sec. 9(2) of the Act though he has placed reliance on the statements of 4 anonymous witnesses. He has not verified the genuineness and correctness of the statements. He has merely placed a rubber stamp of 'verified the contents' below each statement on 6.7.2000. This type of short-cut method of verification itself shows the nonapplication of mind before passing the order of detentioln. Ms. Banna Datta cited the authority of Jakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana and Ors., reported in 1996(1) G.L.H. 300. In this case the detaining authority had only put an endorsement in form of one word 'verified' below statements of such witnesses. This court has held that the claim of privilege made by the detaining authority on the basis of such endorsement was not genuine and, therefore, the order of continued detention was held to be illegal and in that case the order of detention was set aside and detenu of that case was released. Here in this case also, the detaining authority has put one word verification by affixing rubber stamp impression. Thus,

in view of above legal position, the order under challenge is bad in law and same is required to be set aside.

5. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 7.7.2000 passed by the respondent no. 1 with respect to detenu is set aside. The detenu is ordered to be released forthwtih, if he is not required in any custody for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)
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